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JUSTICE

Vol.33 **ACTUALITÉS - REPORT** No.3

CANADIAN CRIMINAL JUSTICE ASSOCIATION - ASSOCIATION CANADIENNE DE JUSTICE PÉNALE

INTERVIEW WITH JO-ANNE WEMMERS VICTIMS / VICTIMES #METOO / #MOIAUSSI

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L'ACTUALITÉS JUSTICE renferme des renseignements utiles aux lecteurs de l'Association et au public qui s'intéressent aux questions relatives à l'administration de la justice au Canada. Les opinions qui sont exprimées ne reflètent pas nécessairement les vues de l'Association, mais y figurent afin d'encourager à réfléchir et à agir sur la justice pénale dans tout le Canada.

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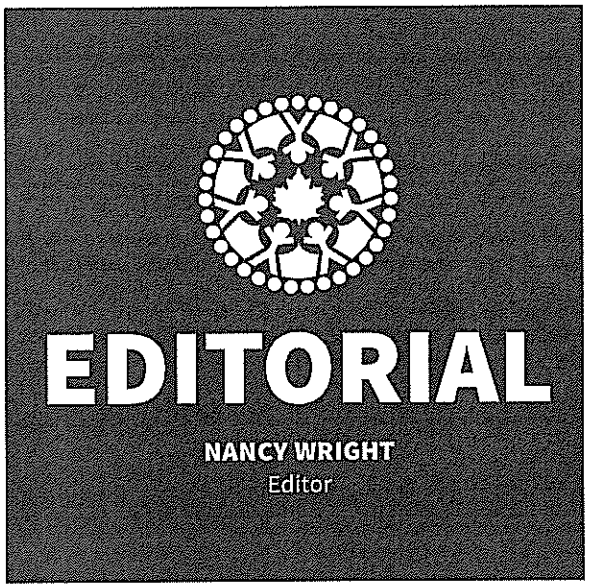


The exploitation of women and the violent crimes perpetrated against them represent among the most serious issues in Canada today. Half of all Canadian women have experienced at least one incident of physical or sexual violence since age 16 and are twice as likely as men to be victims of family violence (Canadian Women's Foundation 2016). The federal government is responding with a comprehensive strategy: *It's Time: Canada's Strategy to Prevent and Address Gender-Based Violence* (2017). This issue of the *Justice Report* provides a number of different perspectives on this complex matter.

Jo-Anne Wemmers points out in the CCJA Interview that we cannot study women and crime without also addressing victimization. Discussing her research into "multiple or 'poly' victimization", Wemmers suggests that victim services can reduce re-victimization and contribute to crime prevention. In her article/review, Margot Van Sluytman (Sawbonna Project) deems Wemmers' book, *Victimology: A Canadian Perspective* (2017), "a user-friendly GPS for navigating a changing justice terrain... that can prove a rich guide for first-time readers and seasoned researchers in the field of victimology".

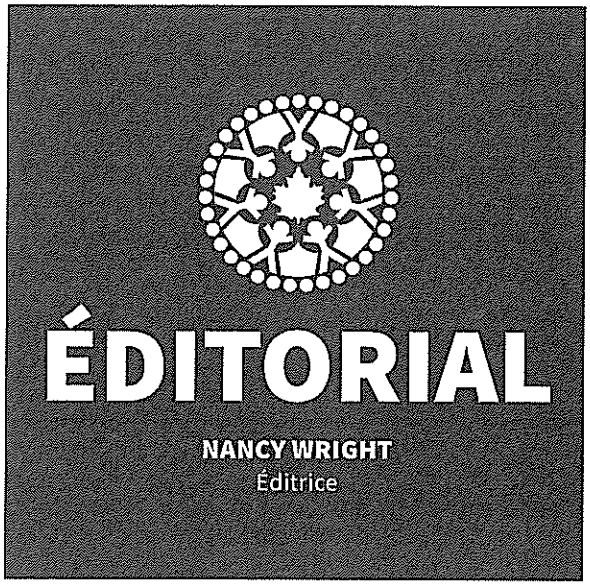
The #MeToo movement has clearly made great strides in breaking the silence around gender-based violence. In this issue, CCJA Policy Review Committee member François Boillat-Madfouny reports on a panel discussion on #MeToo that was organized by the Graduate Student Association of the Université de Montréal Faculty of Law and held last fall.

Natalie Snow (M.Sc., former High-Risk Program Support Counsellor at Victim Services of Peel (ON), and current doctoral student at University of Arkansas at Little Rock, USA) examines changes to Canada's prostitution laws. She points out that prostitution is increasingly seen as a 'victim' crime and that morality-based opposition has long belied any recognition that sex work might be considered a legitimate form of labour by some who practice it.

In the Young Researcher section, Sarah Harrison (CCJA PRC Intern & Carleton University Undergrad) reports on the 2014 *Protection of Communities and Exploited Persons Act*. Depicting the PCEPA as victim-oriented and noting that any opposition to it by sex workers was dismissed, Harrison fast forwards to 2018 to explore whether the new law might magnify harms faced by sex workers.

Finally, an article by two BA Honours Students (University of Ottawa), Farina Chaudhry and Joël Roy Sévigny, reports on the needs of female offenders in a male-centric prison system. The authors illustrate that female inmates are not the only ones paying the price for Canada's ill-fitting federal prisons for women—female prison guards are also at risk of assault and exploitation, whether by inmates or correctional staff.

We trust you will find this issue informative and thought provoking as we continue to highlight contemporary issues in Canadian criminal justice on these pages. ■



L'exploitation des femmes ainsi que les crimes violents perpétrés contre elles figurent parmi les enjeux contemporains les plus sérieux au Canada. La moitié des Canadiennes ont subi au moins un incident de violence physique ou sexuelle depuis l'âge de 16 ans et elles sont deux fois plus à risque que les hommes d'être victimes de violence familiale (Fondation canadienne des femmes, 2016). Le gouvernement fédéral a réagi avec un plan stratégique, *Il est temps: la stratégie du Canada pour prévenir et contrer la violence fondée sur le sexe* (2017). Ce numéro d'*Actualités justice* fournit diverses perspectives sur cet enjeu d'une grande complexité.

Dans son entrevue à l'ACJP, Jo-Anne Wemmers déclare que nous ne pouvons pas étudier les femmes et la criminologie sans inclure le phénomène de la victimisation. Sa recherche sur la « victimisation multiple ou polyvictimisation » suggère que les services rendus aux victimes peuvent réduire les nouveaux épisodes de victimisation et prévenir de nouveaux actes criminels. Puis, dans un article/compte rendu, Margot Van Sluytman (Sawbonna Project) caractérise le livre de Jo-Anne Wemmers (*Victimologie: Une perspective canadienne*, 2017), de « GPS convivial pour naviguer dans un terrain judiciaire changeant », ajoutant qu'il « constitue un guide précieux et audacieux autant pour les novices que pour les chercheurs chevronnés en victimologie ».

Quant au mouvement #MoiAussi, de toute évidence il a mené à des avancées majeures qui permettent de briser le silence entourant la violence basée sur le genre. Dans ce numéro, François Boillat-Madfouny, membre du Comité d'examen des politiques (CEP) de l'ACJP, fait le compte rendu d'une table ronde sur ce sujet, tenue l'automne dernier et organisée par l'Association des cycles supérieurs en droit de la Faculté de droit de l'Université de Montréal.

Pour sa part, Natalie Snow (M. Sc., ancienne conseillère au Programme de soutien pour les personnes à haut risque de violence, Services aux victimes de Peel, en Ontario, et doctorante à l'Université d'Arkansas à Little Rock aux É.-U.) analyse les changements aux lois canadiennes sur la prostitution. Elle constate que, non seulement la prostitution est de plus en plus considérée comme un crime de « victime », mais aussi que l'opposition à la prostitution qui est fondée sur la moralité empêche depuis longtemps la reconnaissance du travail sexuel comme une forme légitime de travail par une partie des personnes qui le pratiquent.

Dans la section Jeunes Chercheurs, Sarah Harrison (stagiaire au CEP de l'ACJP et étudiante au premier cycle à Carleton University) examine la Loi sur la protection des collectivités et des personnes victimes d'exploitation adoptée en 2014. Elle décrit les objectifs de LPCPVE comme étant pro-victimes tout en notant que les oppositions émises par les travailleuses du sexe avaient été entièrement rejetées. Elle se demande si quatre ans plus tard, en 2018, la nouvelle loi n'aurait pas intensifié les dangers auxquels font face ces travailleuses.

Le dernier article provient de deux étudiants au baccalauréat spécialisé en sciences sociales de l'Université d'Ottawa, Farina Chaudhry et Joël Roy Sévigny. L'article aborde les besoins des contrevenantes dans un système pénitentiaire masculiniste. Les auteurs illustrent le fait que les détenues ne sont pas les seules à payer le prix d'un système pénitentiaire qui n'a pas été conçu pour les femmes. Les gardiennes risquent également d'être agressées et exploitées, et ce, autant par les détenues que par les employés de ces établissements.

Nous continuerons de mettre en évidence des enjeux contemporains sur la justice pénale canadienne et nous espérons que ce numéro saura susciter de nombreuses réflexions tout en vous informant. ■

CCJA INTERVIEW WITH **JO-ANNE WEMMERS**

NANCY WRIGHT
Editor

ABOUT JO-ANNE WEMMERS (PHD): *Currently a full Professor at the School of Criminology of the Université de Montréal as well as principal researcher at the* ***International Centre for Comparative Criminology****, Jo-Anne Wemmers obtained a doctoral degree in criminology from the Law Faculty at Leiden University in the Netherlands. Professor Wemmers has published widely in the areas of victimology, international criminal law, and restorative justice. Her books include* ***Victimology: A Canadian Perspective****, (University of Toronto Press 2017), which has been translated into French (****Les Presses de l'Université de Québec, 2017****). In 2015, Wemmers was awarded a* ***Certificate of Appreciation by the World Society of Victimology*** *for her contribution to victimology and to the Society. Previously Director of the French journal* ***Criminologie (2012-2015)****, Wemmers is currently Editor of the* ***International Review of Victimology.***

VICTIMOLOGY, WOMEN AND CRIME

Jo-Anne Wemmers, could you talk to us about your own path in justice?

I have been working in victimology ever since I was first introduced to it as a young masters student in The Netherlands. Victimology is the scientific study of victimizations attributable to violations of human rights, including crime, and reactions to victimization and victims. It is important because it allows us to not only understand victimization and its consequences, but also to prevent re-victimization by better assisting victims, promoting individual wellbeing, and fostering healthy communities. These ideas are further developed in my book, ***Victimology: A Canadian Perspective***.

What are your thoughts on women and crime?

We cannot study women and crime without also addressing victimization. This is particularly important with respect to Indigenous women and girls in Canada. While it is well established that victimization and delinquency are related, how this relationship works is not clear and victims and offenders are still often studied and treated as two distinct groups. However, advances in victimology, in particular research on multiple or "poly" victimization, in which a person experiences several different forms of victimization such as physical violence, theft, sexual abuse, and witnessing violence, provide us with important insights in order to better understand this relationship.

Could you talk to us about why society's most vulnerable are more likely to be criminalized?

Reactions to trauma following victimization include depression, anxiety, post-traumatic stress and anger. Negative coping strategies following victimization include alcohol and drug use, which render the individual vulnerable to re-victimization and are also associated with delinquency. Individuals who experience poly victimization often report feeling angry, and anger is also associated with (self-report) delinquency.

How effectively are vulnerable members of society served by our penal system?
It's important to consider the trauma resulting from multiple victimization experiences and how victims are treated in the criminal justice system. Research in developmental victimology reveals that children (under 18) are at greater risk of victimization than adults and that individuals who experienced early and persistent violent victimization are particularly vulnerable to subsequent victimization in adulthood. Inadequate access to victim services including material, medical, psychological, legal and social assistance, hinders victims' recovery from victimization and renders them vulnerable to ***re-victimization***. For these victims, their first experiences with the criminal justice system are often disappointing. Victims' legitimate need for protection is not met by the criminal justice system because of its focus on the criminalization of offenders rather than the protection of victims. However, if victimized youth later come into contact with the criminal justice system as delinquents, then the same system that failed to protect them will criminalize them.

Tell us how research into a victim-centred, holistic approach to crime can meet the needs of prevention?
The phenomenon of multiple victimization and the cumulative impact of re-victimization on the individual emphasize the significance of studying victimization not as an isolated event but rather in the context of the person's life course. In particular, they highlight the importance of victim services as a means to reduce the individual's risk of re-victimization and thereby contribute to crime prevention. ■

À PROPOS DE JO-ANNE WEMMERS (PH.D.):
Professeure titulaire à l'École de criminologie de l'Université de Montréal et chercheuse principale au Centre international de criminologie comparée, Jo-Anne Wemmers détient un doctorat en criminologie de la Faculté de droit de l'Université Leiden aux Pays-Bas. Auteure prolifique en criminologie, en droit criminel international et en justice réparatrice, elle a notamment publié ***Victimologie: Une perspective canadienne*** *(Presses de l'Université du Québec, 2017) qui est également disponible en anglais (****Victimology: A Canadian Perspective****, University of Toronto Press, 2017). En 2015, la Société mondiale de victimologie lui a décerné un Certificat d'appréciation en reconnaissance de sa contribution à la victimologie et à la Société. Elle a été directrice de la revue* ***Criminologie*** *(2012-2015) et elle est rédactrice en chef de l'****International Review of Victimology.***

VICTIMOLOGIE, FEMMES ET CRIMINOLOGIE

Traduction, CCJA Interview with Jo-Anne Wemmers, page 7.

Jo-Anne Wemmers, pouvez-vous nous dire quelques mots sur votre parcours en justice?
Je travaille en victimologie depuis le début de mes études de maîtrise aux Pays-Bas. La victimologie est l'étude scientifique des victimisations attribuables à des violations des droits de la personne, incluant les crimes et les réactions des victimes. La victimologie nous permet non seulement de comprendre la victimisation et ses conséquences, mais aussi de prévenir de nouvelles victimisations en offrant un meilleur soutien aux victimes, en valorisant le bien-être individuel et en favorisant des collectivités en santé. Ces idées sont abordées en détail dans mon livre ***Victimologie: Une perspective canadienne.***

Quelles sont vos réflexions sur les femmes et le crime?
Nous ne pouvons pas étudier les femmes et la criminologie sans parler de victimisation. Cela s'applique particulièrement aux femmes et aux jeunes filles autochtones au Canada. Bien que le lien soit clairement établi entre victimisation et délinquance, le fonctionnement de ce lien n'est pas bien compris. Ainsi, les études considèrent souvent les victimes et les contrevenants comme deux groupes séparés. Pourtant, les avancées en

victimologie, en particulier les recherches sur la victimisation multiple ou polyvictimisation – c'est-à-dire les cas où une personne vit plusieurs formes de victimisation telles que la violence physique, le vol, la violence sexuelle et être témoin de violence – fournissent des perspectives importantes pour mieux comprendre ce lien.

Pourquoi les personnes les plus vulnérables sont-elles plus susceptibles d'être criminalisées?

Les réactions traumatiques à la suite d'un acte de victimisation incluent la dépression, l'anxiété, le stress post-traumatique et la colère. Les stratégies d'adaptation négatives incluent la consommation d'alcool et de drogue, qui rend la personne vulnérable à une nouvelle victimisation et qui est aussi associée à la délinquance. Les personnes subissant des formes de polyvictimisation parlent souvent de leur sentiment de colère, une émotion également associée à la délinquance (autodéclarée).

Quelle est l'efficacité des services rendus aux personnes vulnérables par notre système de justice?

C'est important de réfléchir au traumatisme résultant de la polyvictimisation et à la façon dont les victimes sont traitées dans le système de justice pénale. Les recherches en victimologie développementale révèlent non seulement que les enfants (moins de 18 ans) sont plus sujets à la victimisation que les adultes, mais aussi que les personnes qui ont subi des actes violents et répétés de victimisation dès leur enfance sont particulièrement vulnérables à la victimisation à l'âge adulte. Un accès inadéquat aux services, incluant du soutien matériel, médical, psychologique, légal et social, entrave le rétablissement des victimes et les rend vulnérables à ***de nouveaux épisodes*** de victimisation. Ces victimes sont souvent déçues de leurs premiers rapports avec le système de justice pénale qui ne répond pas à leurs besoins légitimes de protection parce que le système se concentre sur la criminalisation des contrevenants plutôt que sur la protection des victimes. Cependant, si ces personnes entrent plus tard dans le système comme contrevenants, ce même système qui ne les a pas protégées les criminalise.

Comment des recherches sur une approche globale centrée sur les victimes peuvent-elles répondre aux besoins de prévention?

La polyvictimisation et l'impact cumulatif d'épisodes répétés de victimisation sur la personne soulignent l'importance non pas d'étudier la victimisation comme un événement isolé, mais plutôt de la situer dans le contexte de vie de la personne. Cela renforce également l'importance de fournir des services aux victimes comme moyen pour réduire les risques de nouvelles victimisations et contribue ainsi à prévenir de nouveaux actes criminels. ■

Sexual Violence and The Criminal Justice System Post-#MeToo: Towards Reform?

FRANÇOIS BOILLAT-MADFOUNY
CCJA PRC Member, Graduate Student

On April 13th, 2018, the Graduate Student Association of the Faculté de droit de l'Université de Montréal organised a panel discussion following up the #MeToo movement that popularized on traditional and social media in fall 2017. The strength and popularity of the movement indeed raise many questions as to the prevalence of sexual violence in society and the State's ability to adequately curb it. Academics and practitioners were invited to give their impressions on this issue and on the appropriateness of reforming the legal rules that regulate sexual violence offenses. This article briefly summarizes the essence of what was said during the panel discussion.

Anne-Marie Boisvert, criminal law professor at the Faculté de droit de l'Université de Montréal, was first to speak. The main idea that she strongly conveyed was that legislative criminal justice reform is not an approach that should be privileged in the fight against sexual violence. For the professor, the law regarding consent is clear[1]. Furthermore, she explains that the tendency to be more and more explicit regarding what constitutes consent or not can have unintended consequences, such as focusing heavily and unduly on the behavior of the complainant instead of on the behavior of the alleged offender. She also notes that there is a limit to how much criminal law can be used to dictate sexual norms. Moreover, she stresses the importance of not politicising our criminal justice system, explaining how a populist approach regarding criminal justice reform very rarely leads to evidence-based and appropriate public criminal policy. In conclusion, the professor recognises the frustration of complainants with the current justice system and believes they could play a greater role in the criminal justice process. She endorses the abolition of preliminary inquiries for certain offenses[2], proposes the adoption of a more conciliatory approach, and hints at the idea of a complainant as a civil party. Finally, she comments that victims may well be given a greater role during the process of determining the appropriate sentence.

The role of the victim within the criminal justice system was also commented on by the next guest, Professor **Jo-Anne Wemmers**, who teaches criminology and victimology at the École de criminologie de la Faculté des arts et des sciences de l'Université de Montréal. She begins by explaining how our criminal justice system is built on the premise that any crime is considered to be committed against the State, to which the victim is a witness, even though it is she or he who has suffered the losses. Wemmers reminds us that crime evidently has consequences on society itself, yet it first and foremost implies a violation of a person's fundamental rights. She believes the

criminal justice system has forgotten this, which she strikes as the crux of the problem. Recognizing that victims do play a role in the determination of the appropriate sentence[3], she stresses the importance of integrating them within the criminal process of determining the *guilt* of the accused. To that effect, during her presentation, the professor introduces several different pieces of legislation supporting the idea that victims must be subjects of the criminal justice process, rather than objects. Yet, she insists that victims do not wish to take over the role of the judge and be burdened with decision-making. Rather, the professor concludes by restating that the current approach by which a victim is considered merely as a witness to a crime against the State is an out-of-date approach that fails to consider the importance of granting witnesses a certain legal personality within the criminal justice process as a whole.

Rachel Chagnon, criminal law professor at the Département des sciences juridiques de l'Université de Québec à Montréal, was next up. She began by introducing a recently published research project that focused on women, sexual violence and the criminal justice system[4]. She insisted on two conclusions. First, that sexual violence offenses are underreported, and second, that there is a gap between the number of complaints and the number of cases for which investigation resources are granted. The law professor explains how our perspective of what constitutes a "sexual offender" is highly mysticized. This reality has very real consequences on the ability to prosecute sexual offenders in that all situations that do not correspond to our dramatic idea of what constitutes sexual assault are judged insufficiently blameworthy to warrant criminal sanctions. Furthermore, regarding victims' satisfaction with the criminal justice system, the professor notes that it is fairly low, and how it can be explained by the fact that victims feel they are not being listened to and simply don't understand the criminal justice process by which they feel hustled. The professor, after asking herself what we can be done to improve the system, strongly rejects the usefulness of reforming the laws regulating the notion of consent—as did Professor Anne-Marie Boisvert. Rather, she proposes we focus our efforts on improving the know-how of those who work in the system.

Interestingly enough, the next guests were representatives of the prosecutorial entity for sexual offenses in the province of Québec, i.e. the "Directeur des poursuites criminelles et pénales" (DPCP). **Me Rachelle Pitre**, assistant chief prosecutor, began by describing the quasi-judicial nature of the prosecutor's role, explaining how he or she maintains a very large discretionary power even though certain guidelines must be followed. Me Pitre explained how her team is specifically trained for the prosecution of sexual offenses and how her organization favours a more vertical approach[5] to ensure that victims feel more comfortable during the whole judicial process. Me Pitre also stresses how the prosecution of sexual offenses involves different legal realities, including, evidently, the presumption of innocence, as well as the fact that in most cases, the only evidence available is the complainant's testimony[6]. **Me Sylvie Lemieux**, who also works for the DPCP, focused her presentation on the way complainants are treated during the judicial process, essentially explaining how prosecutors take the necessary time to answer their questions and adequately prepare them for cross-examination. She also notes that the *Criminal Code* offers several tools that can be used to facilitate the complainant's experience in the criminal justice system[7]. Overall, both prosecutors demonstrate through their respective presentations that particular attention is given to the treatment of complainants of sexual offenses.

In conclusion, this article briefly summarizes the many issues that were raised during the panel discussion held on April 13th. If there is at least one definite conclusion to be derived from this, it is that the issue of sexual violence and the criminal justice system is very broad and complex and arguably requires a multidisciplinary approach. We hope that this article has given you some insight into at a few of the many questions we must ask ourselves in regard to our criminal justice system and its ability to adequately respond to sexual violence. ■

1. See *R. v. Ewanchuck*, [1999] 1 S.C.R. 330.

2. Bill C-75, recently submitted to the House of Commons by Minister of Justice Jody Wilson-Raybould proposes, inter alia, to abolish preliminary inquiries for certain offenses.

3. S. 722 of the *Criminal Code* does indeed provide the opportunity for the prosecution to submit a "Victim Impact Statement":
"722 (1) When determining the sentence to be imposed on an offender or determining whether the offender should be discharged under section 730 in respect of any offence, the court shall consider any statement of a victim prepared in accordance with this section and filed with the court describing the physical or emotional harm, property damage or economic loss suffered by the victim as the result of the commission of the offence and the impact of the offence on the victim."

4. FRENETTE, Michèle, BOULEBSOL, Carole, LAMPRON, Eve-Marie, CHAGNON, Rachel, COUSINEAU, Marie-Marthe, DUBÉ, Myriam, LAPIERRE, Simon, SHEEHY, Elizabeth, Regroupement des maisons pour femmes victimes de violence conjugale (RMFVVC), Fédération des maisons d'hébergement pour femmes (FMHF), Regroupement québécois des CALACS (RQCALACS), Concertation des luttes contre l'exploitation sexuelle (CLES), GAGNON, Charlotte (2018). Femmes victimes de violence et système de justice pénale : expériences, obstacles et pistes de solution. Montréal : Service aux collectivités de l'Université du Québec à Montréal/RMFVVC/FMHF/RQCALACS/CLES. Online: [http://sac.uqam.ca/upload/files/Rapport_femmes_violence_justice.pdf].

5. A vertical approach implies that it is the same prosecutor that follows a file in all of its steps through the system. This approach is different than a horizontal one that is privileged in other prosecutorial entities in the province.

6. In sexual assault cases, the debate almost always revolves around the notion of consent. There are often very few other witnesses or other types of evidence that can corroborate if there was consent or not. Hence, the trial becomes essentially a contest of credibility between the complainant and the defendant to which the judge must apply the rules of *R. v. W. (D).*, [1991] 1 S.R.C. 742. A quick reminder: the prosecution must prove beyond a reasonable doubt all the essential elements of the offense.

7. For instance, the *Criminal Code* allows for the prosecution to ask for the complainant (if a minor or with a mental disability) to be accompanied during his or her testimony by a support person (*Crim. C.*, s. 486.1) or to testify behind a screen to avoid being seen by the public (*Crim. C.*, s. 486). Furthermore, the prosecution can ask the judge to prohibit the accused from cross-examining himself the complainant, for certain sexual offenses (*Crim. C.*, s. 486.3(2)).

La violence sexuelle et le système de justice pénale post-#MoiAussi : vers une réforme?

FRANÇOIS BOILLAT-MADFOUNY
Étudiant de 2e cycle en droit criminel
Membre du Comité d'examen des politiques de l'Association canadienne de justice pénale

En date du 13 avril 2018, l'Association des cycles supérieurs des étudiants en droit de la Faculté de droit de l'Université de Montréal a organisé une table ronde s'intéressant à l'après du mouvement #MoiAussi qui avait déferlé sur les médias traditionnels et sociaux en automne 2017. En effet, ces récentes vagues médiatiques ont soulevé de nombreuses discussions relatives à la prévalence de la violence sexuelle dans nos sociétés et à la capacité de l'État d'adéquatement y répondre. Dans le cadre de la table ronde, académiciens et praticiens ont été appelés à donner leurs impressions sur cette thématique et à se prononcer, le cas échéant, sur l'opportunité de réformer le cadre législatif régissant l'administration des infractions de nature sexuelle en droit canadien. Ce court article reprend l'essence des propos qui y ont été tenus.

C'est **Anne-Marie Boisvert**, professeure de droit pénal à la Faculté de droit de l'Université de Montréal, qui débute la conversation. L'essentiel de son propos est à l'effet qu'une réforme législative du *Code criminel* n'est pas l'approche à privilégier pour mieux répondre à la violence sexuelle.
En effet, selon la professeure, le droit relatif au consentement sexuel est clair[1]. Or, elle estime qu'un encadrement législatif de plus en plus explicite de la notion de consentement risque d'avoir des effets pervers, notamment en ce que cela ne ferait que renforcer la tendance à maintenir le projecteur juridique sur le comportement du plaignant plutôt que sur celui de l'agresseur allégué[2]. Par ailleurs, elle estime qu'il y a des limites à vouloir normaliser explicitement le comportement sexuel; le système de droit pénal ne peut être l'instrument de choix pour normaliser et dicter la sexualité. Plus encore, elle estime qu'il faille cesser dépolitiser le système de droit pénal, insistant sur l'idée que le populisme pénal mène rarement à l'élaboration de politiques publiques pénales fondées et appropriées.
Pour conclure, la professeure s'intéresse plus particulièrement aux plaignants, reconnaissant leur frustration relativement au processus judiciaire et estimant qu'il faille leur y donner davantage de place. Elle mentionne alors apprécier la proposition d'abolir les enquêtes préliminaires[3], propose de favoriser une approche davantage médiatrice et effleure l'idée de permettre à une victime alléguée de devenir une partie civile au processus judiciaire. La professeure mentionne finalement la possibilité de donner davantage de place aux victimes lors du processus de détermination de la peine.

La question du rôle de la victime au sein du processus judiciaire pénal a également été abordé par la prochaine intervenante, **Jo-Anne Wemmers**, professeure à l'École de criminologie de la Faculté des arts et des sciences de l'Université de Montréal. L'académicienne explique tout d'abord que notre système de droit pénal est bâti de sorte que la

victime est *témoin* d'un crime contre l'*État*, malgré que ce soit elle qui en subit les conséquences. Reconnaissant bien sûr qu'un crime implique des dommages à la société, la professeure insiste sur l'idée qu'il implique avant tout une violation des droits fondamentaux de la victime, ce que le système semble avoir oublié. Pour Wemmers, voilà le cœur du problème. Il est vrai, reconnaît-elle, que le *Code criminel* permet, lors du processus de détermination de la peine, à la victime de faire une déclaration relative aux dommages causés par la commission de l'infraction pour laquelle l'accusé a été reconnu coupable[4]. Or, la professeure soutient que la victime doit également être intégrée au processus pénal relatif à la détermination de la *culpabilité* de l'accusé. Dans le cadre de sa présentation, l'académicienne survole les différents textes juridiques soutenant la notion que la victime ne doit pas être *objet*, mais bien *sujet* du système de justice pénale, tout en insistant sur l'idée que les victimes ne cherchent pas à usurper les autorités judiciaires du pouvoir décisionnel en matière pénale. Plutôt, l'auteur estime que l'approche selon laquelle la victime n'est qu'un témoin d'un crime contre l'État, alors qu'elle en subi tous les dommages, est une approche arriérée qui ne tient pas compte de l'importance de lui octroyer une certaine personnalité juridique au sein du processus de justice dans son ensemble.

C'est **Rachel Chagnon**, professeure de droit pénal au Département des sciences juridiques de l'Université de Québec à Montréal, qui prend alors le relais. Elle débute par introduire une recherche à laquelle elle a participé qui s'intéresse aux femmes victimes de violence sexuelle et au système de justice pénale québécois[5]. Un des constats en découlant est à l'effet que non seulement les infractions de violence sexuelle sont sous-dénoncées, mais il y a un décalage entre le nombre de dénonciations et les mises en enquêtes par les autorités compétentes. Selon la professeure, cette réalité résulte du fait que l'agression sexuelle est une infraction non seulement hautement stigmatisée, mais également hautement "mysticisée". En effet, selon l'académicienne, le fait qu'on ait une vision très dramatique et fantasmée de l'agresseur sexuel a comme conséquence concrète que toutes les situations qui ne correspondent pas exactement à cette vision sont jugées insatisfaisantes pour mériter une sanction pénale. La professeure explique par la suite que les victimes semblent en grande partie insatisfaites du système de justice pénale, que ce soit parce qu'elles se sentent trop peu écoutées, ou parce qu'elles ne comprennent pas le fonctionnement d'un système dans lequel elles se sentent bousculées. Pour conclure, la professeure Chagnon, après s'être demandé comment améliorer le système, écarte tout d'abord la réforme législative comme solution magique aux problèmes qu'elle a soulevés – comme l'avait fait la professeure Anne-Marie Boisvert - et propose plutôt d'améliorer le savoir-faire des intervenants travaillant au sein du système lui-même.

À cet effet, la table ronde a été clôturée par les présentations de deux représentantes de l'entité poursuivante en matière d'infractions de nature sexuelle au Québec, soit le Directeur des poursuites criminelles et pénales (DPCP). **Me Rachelle Pitre**, procureur en chef adjointe aux poursuites criminelles et pénales, débute son intervention par un portrait général du rôle du DPCP et des différentes réalités caractérisant les poursuites relatives aux infractions de nature sexuelle. Elle rappelle notamment que le procureur joue un rôle quasi-judiciaire, qu'il est guidé par des directives, bien qu'il possède un immense pouvoir discrétionnaire, et qu'il est spécialement formé pour ce type d'infraction. Elle mentionne également comment en matière d'infractions de nature sexuelle, le DPCP adopte une approche verticale[6], privilégie un traitement attentionné des plaignants et doit travailler avec diverses réalités juridiques, tels le droit constitutionnel à la présomption d'innocence et le fait que le témoignage du plaignant est souvent la seule preuve disponible[7]. **Me Sylvie Lemieux**, procureur au DPCP et travaillant en matière d'agression sexuelle pendant de nombreuses années, décrit quant à elle plus spécifiquement l'approche des procureurs eu égard au traitement des plaignants lors du processus judiciaire. Elle explique entre autres comment les procureurs prennent le temps de bien répondre aux questions des plaignants, de bien les préparer pour le contre-interrogatoire et de leur offrir différents outils afin de faciliter leur témoignage en cour[8]. Ainsi, on comprend rapidement comment le DPCP semble porter une attention particulière au traitement des plaignants dans le contexte d'infractions de nature sexuelle.

Donc voilà un bref portrait des nombreuses notions qui ont été abordées lors de la table ronde du 13 avril dernier. S'il y a une chose que l'on peut en retenir, c'est que la question de la violence sexuelle et du droit pénal est extrêmement large et nécessite certainement une réflexion multidisciplinaire. Nous espérons que cet article aura su au moins effleurer la surface des nombreuses questions qui doivent se poser eu égard au système et à sa capacité d'adéquatement administrer la justice pénale en matière sexuelle. ■

1. Voir *R. c. Ewanchuck*, [1999] 1 R.C.S. 330.

2. L'utilisation du genre masculin a été privilégiée à la seule fin d'alléger le texte.

3. Le projet de loi C-75, récemment déposé à la Chambre des communes par la ministre de la Justice Jody Wilson-Raybould, propose entre autres l'abolition de l'enquête préliminaire eu égard à certaines infractions.

4. L'article 722 du *Code criminel* permet en effet à la poursuite de déposer une « Déclaration de la victime » :
« 722 (1) Pour déterminer la peine à infliger ou pour décider si un délinquant devrait être absous en vertu de l'article 730, le tribunal prend en considération la déclaration de la victime, rédigée en conformité avec le présent article et déposée auprès du tribunal, décrivant les dommages — matériels, corporels ou moraux — ou les pertes économiques qui ont été causés à la victime par suite de la perpétration de l'infraction ainsi que les répercussions que l'infraction a eues sur elle. »

5. FRENETTE, Michèle, BOULEBSOL, Carole, LAMPRON, Eve-Marie, CHAGNON, Rachel, COUSINEAU, Marie-Marthe, DUBÉ, Myriam, LAPIERRE, Simon, SHEEHY, Elizabeth, Regroupement des maisons pour femmes victimes de violence conjugale (RMFVVC), Fédération des maisons d'hébergement pour femmes (FMHF), Regroupement québécois des CALACS (RQCALACS), Concertation des luttes contre l'exploitation sexuelle (CLES), GAGNON, Charlotte (2018). Femmes victimes de violence et système de justice pénale : expériences, obstacles et pistes de solution. Montréal : Service aux collectivités de l'Université du Québec à Montréal/RMFVVC/FMHF/RQCALACS/CLES. En ligne : [http://sac.uqam.ca/upload/files/Rapport_femmes_violence_justice.pdf].

6. Une approche verticale implique qu'un même procureur suit un dossier dans toutes ses étapes, de l'autorisation au procès. Cette approche se distingue d'une approche horizontale privilégiée au sein d'autres entités poursuivantes au Québec.

7. En effet, la question la plus souvent débattue lors d'un procès en matière d'agression sexuelle est à savoir s'il y a effectivement eu consentement. Il y a très peu souvent des témoins ou d'autres éléments de preuve pouvant corroborer l'absence de consentement, de sorte que le procès implique fréquemment un concours de crédibilité entre l'accusé et la victime. Le juge aura à appliquer les règles de l'arrêt *R. c. W.(D.)*, [1991] 1 R.C.S. 742. Rappelons qu'il appartient à la poursuite de prouver hors de tout doute raisonnable chacun des éléments essentiels de l'infraction.

8. Par exemple, le *Code criminel* permet au poursuivant de demander que le plaignant (si mineur ou ayant une déficience mentale) soit accompagné d'une personne de confiance lors de son témoignage (*C.cr.*, art. 486.1) ou qu'il témoigne derrière un écran afin d'éviter d'être vu par le public (*C.cr.*, art. 486). En sus, à l'égard de certaines infractions de nature sexuelle, le poursuivant peut demander au juge d'interdire à l'accusé de contre-interroger lui-même le plaignant (*C.cr.*, art. 486.3(2)).

Prostitution in Canada

NATALIE SNOW
ABOUT THE AUTHOR: Natalie Snow was born in Toronto and holds a Bachelor of Social Science from that city's Humber College. She completed her M.Sc. at Niagara University and has worked as a High Risk Program Support Counsellor with Victim Services of Peel, Ontario. Ms. Snow is currently completing her doctorate at University of Arkansas at Little Rock (USA).

Natalie Snow reviews the current socio-legal landscape on prostitution, especially as regards recent legislative changes relating to prostitution in Canada and the Supreme Court ruling that led to the reforms. Examining the morality-based opposition to prostitution and reviewing a current argument for recognizing sex work as a form of labour, Snow offers insight into the age-old issue of prostitution, which is increasingly being seen as a 'victim' crime.

Simply defined, the act of prostitution encompasses the exchange of money or material goods for a sexual act. Due to certain complexities, however, such transactions are far from straightforward. Prostitution has typically been divided into two categories: street and indoor. The difference in these categories lies mostly in the location of the solicitous transaction. Street prostitution refers to transactions made in public places (e.g., street corners) followed by a sexual act in either a public or private location. Indoor prostitution refers to solicitous transactions made in private areas (e.g., hotel rooms, massage parlours) in which the subsequent sexual encounters also take place.

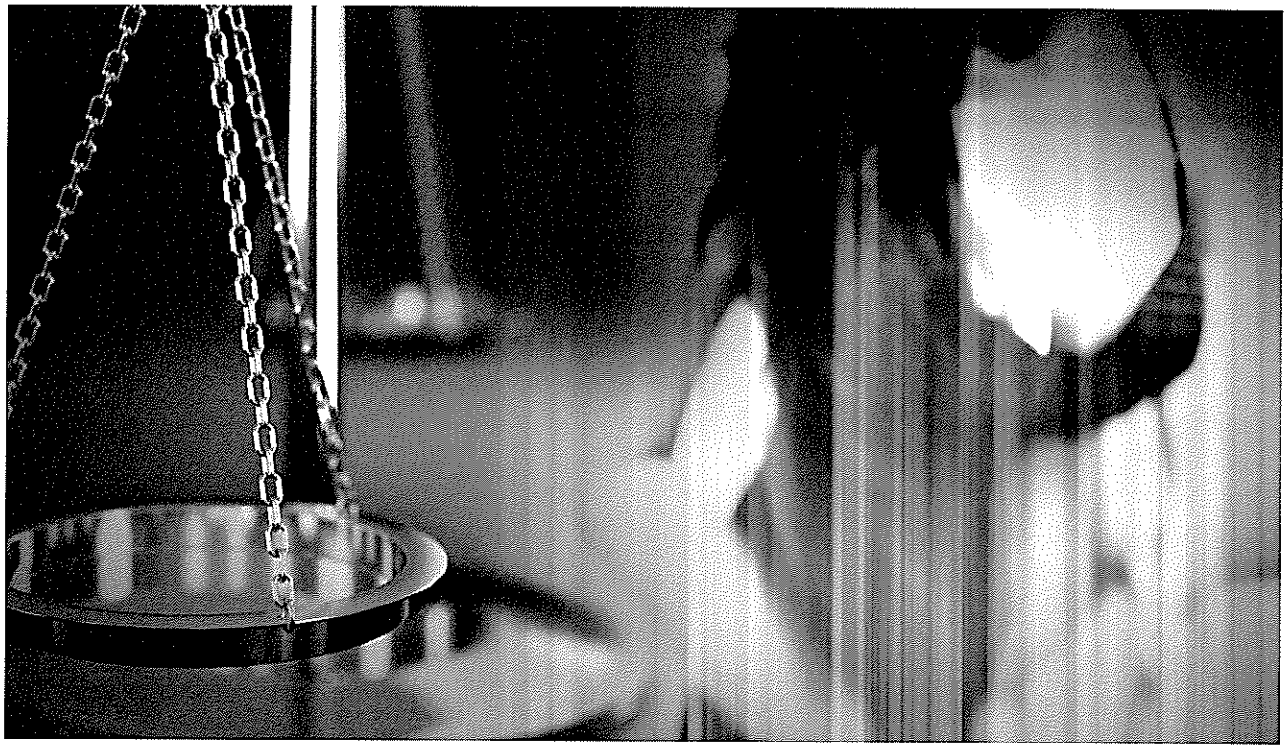
PROSTITUTION INDUSTRY MOVES TOWARD AN ONLINE FORUM

The visibility of prostitution has taken a drastic shift of late, towards an online forum. What we have been seeing is an increase of online presence of escort advertisements on various platforms. These platforms are hidden in plain sight. It has been argued that the ability to utilize an online platform has increased the ability for a sex worker to screen potential clients and negotiate terms of services, which in turn decreases the risk of violence.

Regardless of the specifics of the transaction, prostitution inevitably conjures up negative perceptions in the eye of the public. This is especially true with street work prostitution. The socially embedded negative perceptions associated with such work have long-lasting effects for the women and men who take part, making the current socio-legal landscape and opposing viewpoints on prostitution issues of vital importance to all Canadians.

PROSTITUTION LAWS IN CANADA

The case *Attorney General of Canada v. Bedford* (2013) challenged the laws then in place. They were found to violate Section 7 of the *Charter of Rights and Freedoms*, which guarantees the right to life, liberty, and security of the person. These breaches, identified in the Bedford case, informed the Supreme court's 2013 ruling, which declared three provisions (communication/solicitation, bawdy-house, and living on the avails) in the Criminal Code would be rendered invalid within 12 months of the ruling. It was argued that the current law risked the safety and security of sex workers by contributing to unsafe work conditions.



The Supreme Court's 2013 ruling marked a shift in the laws relating to prostitution through the enactment of PCEPA, the *Protection of Communities and Exploited Persons Act* (Bill C-36) in 2014. It replaced the previous legislation viewed as harmful to sex workers and also the government hoped it would "end the demand" as a way to eradicate prostitution, the oldest profession. The new provisions allow for the prosecution of those who advertise sex work and make money off sex workers, and they also made it a criminal offence to purchase sexual services, thereby criminalizing the (typically male) clients. Prior to this, prostitutes were the most likely to be arrested and charged for prostitution-related offenses, until around the early 2000's when the proportion of police-reported arrests began to even out (Rotenberg, 2016) due to an increase in male prostitution.

The latest statistics from StatsCan show that the number of males accused in prostitution offenses "increased from 53% in 2011 to 81% in 2014" (Rotenberg, 2016, p. 9). Nonetheless, a recent report, the first of its kind in Canada, indicates that "77 percent of sex workers identify as women, 17 percent as men, and 6 percent as other genders" (Benoit 2014). Prior to 2014, the laws did not distinguish between people purchasing and selling, and the majority of the prostitution-related charges were for the communication aspect. The fact that the PCEPA did not criminalize the act of prostitution illustrates its victim-oriented approach. It has been argued by many that the new laws are neither safer for the women nor decrease the risk of violence (Hollett 2016; Canadian Alliance for Sex Work Law Reform 2018).

The PCEPA was the Canadian government's interpretation of the Nordic legal framework to prostitution, which posits "prostitution as exploitive of primarily women and girls and aims to reduce its incidence by penalizing the purchasers and those who benefit financially" (Rotenberg, p 4, 2016). As of February 2018, a London (ON) trial of two people charged with two dozen sex-related charges under the revamped law is moving forward as a constitutional challenge to the statutes (CBC, 2018). Specifically, the lawyers are challenging the elements of Bill C-36 as concerns advertising someone else's sexual services; benefiting financially or otherwise from someone else's sexual services; and procuring a person to offer or provide a sexual service (CBC, 2018).

MORALITY AND PROSTITUTION

The topic of prostitution is surrounded by many controversies related to morality and ethics. The debate on prostitution bears on the moral issue of whether the sexual service is degrading because it exploits one's body. The women involved essentially sell their bodies for the pleasure of men who are willing to pay. Prostitutes allow their bodies to be used for sex countless times, which can be viewed as degrading oneself for the benefit of another and thus as immoral. A common argument against prostitution is that paying a person for sexual gratification can reduce prostitutes to objects to serve their clients' needs.

The moral and ethical controversies surrounding prostitution also include social stigmas. For instance, the risks due to the criminalization of prostitution-related activities can be especially severe for those women who are the sole providers for their family. They live with the uncertainty of potential jail time that would make it impossible for them to look after their children and maintain a home. Consideration must also be given to the stigma attached to criminality itself. The stigma that follows a conviction of prostitution is detrimental and debilitating for the self and the family.

Prostitutes carry the 'whore' stigma throughout their lives. Stigmatization is a powerful social 'curse' that can be deeply hurtful and isolating and have profound consequences. Such negative treatment can be felt both externally and internally and result in a tainted self-image and other issues that can ensue from self hatred. Unfortunately, the stigma can also be detrimental to one's ability to obtain medical treatment, access community resources, obtain loans (home/car) and be a good and respected parent. On the other end of the continuum, a vocal and robust argument is the fact some women choose to take on this type of work, and it is no more intrinsically wrong or harmful than any other kind of service work. Frequently, women refer to this as sex work, as the term prostitution carries such a negative association.

SEX WORK AS WORK

In recent years a strong argument has been advanced for recognizing sex work as a legitimate form of labour. It sees it as a choice of labour that can be exploitive and otherwise dangerous and thus those who practice it need protection. This

argument is framed around freedom of choice and an adult's right to choose to partake in this form of labour free of coercion and undue health and safety risks. A barrier to fully recognizing sex work as a legal form of labour lies in the moral implications involved with prostitution and the stigma associated with the act. The rights protecting all workers in Canada should be afforded to people who choose sex work as a career. As such, safety—whether it be the woman's safety or safe working conditions—would then become an enforceable priority. It has been said that the freedom to choose is empowering and evokes feelings of validation in the individual worker. PCEPA places all sex workers under the same umbrella, as women in need of saving. The provisions are meant to protect women from violent people and to punish traffickers.

Under the viewpoint that sex work is work, this legislation takes away a woman's right to choose and support herself and her family. The law does not make sex work itself illegal, but it does make many associated activities illegal. For example, the laws prevent them from advertising through a third party and makes their clients guilty of an offence that carries a sentence ranging from a fine to five years in prison. The goal of the Act was meant as a method of protection for women involved in sex work. Unfortunately, this bill appears to limit the sex trade as much as possible. When adult sex work is criminalized, the people involved experience a decreased control over the working conditions and the risk of violence and discrimination are increased (Hollett, 2016).

INDIGENOUS WOMEN

What cannot be ignored is the impact of our laws on already vulnerable populations, specifically Indigenous women. The role colonization has played in the current position of Indigenous women within our society cannot be overstated. Many of the state-sanctioned actions—which include the removal from the land, the residential schools, the sixties scoop, the forced sterilization—among other state-sanctioned violence against Indigenous women—have a direct impact on the rates of violence and vulnerability experienced by the population.

According to Statistics Canada's 2013 report on violence against women, Indigenous women are disproportionally represented as homicide victims. Victimization data indicates Indigenous women have higher rates of self-reported intimate partner violence and violence by a non-intimate partner. Indigenous women are killed at six times the rate of non-Indigenous women (Canadian Women's Foundation 2018). As a society, we cannot dismiss the violence which has inundated this population nor ignore the impact it has had on many women's lives. The National Inquiry into Missing and Murdered Indigenous Women and Girls is attempting to identify the systemic causes of all forms of violence against Indigenous women (MMIWG 2018).

This article is not suggesting that all Indigenous women are victims of violence nor that the women lack agency, just that they are among Canada's most vulnerable for the reasons stated above. The laws we enact are evaluated for all the populations of Canada and, in the case of prostitution, for how they will impact populations involved in the sex trade whether by choice, through coercion, or as a form of survival. Race intersects with other forms of oppression including gender, age, and class. Our laws must respect the autonomy of a person's choice of labour while also protecting the vulnerable from increased risks of violence and exploitation. Since we know prostitution is the oldest profession and still going on today, it makes sense to keep a close eye on what is happening in the streets and online with respect to the laws. ■

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RÉSUMÉ

Prostitution in Canada

NATALIE SNOW
M.Sc., a former High-Risk Program
Support Counsellor at Victim Services of Peel (ON) and current doctoral student at University of Arkansas at Little Rock, USA

Natalie Snow décrit le paysage canadien de la prostitution, plus particulièrement en lien avec la Loi sur la protection des collectivités et des personnes victimes d'exploitation (LPCPVE 2014) et la décision de la Cour suprême de 2013 qui a mené à ces réformes. Elle examine d'abord l'opposition à la prostitution fondée sur la moralité ainsi que les discussions en cours sur le travail sexuel comme une forme de travail pour ensuite offrir des pistes de réflexion sur la prostitution comme un crime de «victime», une position clairement énoncée dans la LPCPVE.

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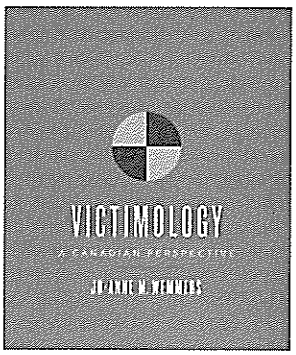
The Colour of Justice - *Victimology: A Canadian Perspective* by Professor Jo-Anne Wemmers

MARGOT VAN SLUYTMAN
The Sawbonna Project

In this article/review, Margot Van Sluytman discusses Jo-Anne Wemmers' 2017 book, ***Victimology: A Canadian Perspective****, as a user-friendly gps for navigating what she terms a changing justice terrain, pointing out that each chapter is a precious and provocative piece that can prove a rich guide for first-time readers and seasoned researchers in the field of victimology. Van Sluytman here also ponders a perceived use of "restorative justice" as a catch-all term for alternative victim-centred theories, noting that a restrictive language framework can sometimes help maintain the status quo. Holding up Jo-Anne Wemmers' "reparative justice" as an example, Van Sluytman stands resoundingly in favour of restorative models through which victim rights are not only clearly identifiable, but also enforceable.*



"A right delayed is a right denied".
– Martin Luther King, Jr.

Each time I hear the phrase "restorative justice", I pause and reflect about what is and is not being implied. I ponder how it is that our justice system must be coloured by and contoured in a framework of language that yearns to offer us ways to navigate the terrain of shared-humanity, of sharing humanity, while many of us are working diligently to assure this and in so doing have found different ways to articulate justice.

Reading Professor Jo-Anne Wemmers' newest book, *Victimology: A Canadian Perspective,* addresses justice through a lens that speaks the values of respect, responsibility, relationship within a Sawbonna crucible. Wemmers work verily reaches to the core of what is possible in our common law system, when human rights becomes the foundation upon which we address and articulate justice.

Each chapter in *Victimology: A Canadian Perspective* is a precious and provocative piece replete with information that can prove a rich guide for first-time readers and seasoned researchers in the field of victimology. Jo-Anne's book is as a user-friendly gps, whereby twelve chapters are organized in a way that invites a reader into a relationship with historical and theoretical content that is clearly explicated. Starting with how and when the notion of "victim" came into being, to the very salient and suffocating fact that in Canada today the victims' only role is witness for the Crown, Wemmers points out that while "numerous laws have been introduced to curb the rights of the accused, victims in Canada still do not have a legal right to participate in the criminal trial other than as witness" (39).

For me, Chapter Eleven, Reparative Justice, is as a linchpin that both underscores and highlights why this book is a brush stroke of genius. Jo-Anne makes a clear and vital case that an us vs. them view of justice is not what victimologists desire. I would suspect that it is not what many victims desire either. I for one do not.

Reparative justice is victim centered, and, as such looks at justice and reparation differently than restorative justice. While it shares the same values as restorative justice, it gives victims a distinct status and recognizes them as more than just an "interested party." Its focus is on victims and their needs. However, "victim-centered" does not mean that the offender rights are to be neglected or ignored" (Victimology, Wemmers 205).

That victims' rights are human rights equates with loosening the grip of unenforceable rights that are purported to be created for victims. Unenforceable rights are questionable at the very best and distasteful, insulting, and virtually useless at the very worst.

What I have gleaned from my first reading of this book, a book I will read much more than once, is that justice is a palette of many hues. That each hue insists that the language we choose to use must find its foundational footing in human rights. In doing so we do not create hierarchies about who is more worthy. Rather what we offer is a way in which we address shared-humanity via a human rights lens. ■

ABSTRACT

The Colour of Justice - Victimology: A Canadian Perspective by Professor Jo-Anne Wemmers

MARGOT VAN SLUYTMAN
Sawbonna Project

Dans cet article/compte rendu du livre de Jo-Anne Wemmers publié en 2017, *Victimology: A Canadian Perspective*, Margot Van Sluytman évoque l'image d'un GPS convivial pour naviguer dans ce qu'elle qualifie de terrain judiciaire changeant. Elle fait remarquer que chaque chapitre constitue un guide précieux et audacieux autant pour les novices que pour les chercheurs chevronnés en victimologie. Margot Van Sluytman réfléchit aussi à l'utilisation de l'expression justice réparatrice comme terme générique pour des théories alternatives en matière de justice, notant au passage qu'un cadre langagier restrictif peut bloquer le progrès. À l'aide d'exemples de son projet, Sawbonna, et de propos de Jo-Anne Wemmers sur la justice réparatrice, Margot Van Sluytman se range résolument du côté des modèles de restauration qui caractérisent les droits des victimes de manière définissable et applicable.
Le livre a été publié simultanément en français : Victimologie: Une perspective canadienne. Jo-Anne Wemmers. Québec, Presses de l'Université du Québec, 2017.

A Critical Look at the 2014 Protection of Communities and Exploited Persons Act (PCEPA)

SARAH HARRISON
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CCJA Policy Review Committee Intern

CCJA PRC intern Sarah Harrison reports on the 2014 enactment of the Protection of Communities and Exploited Persons Act (PCEPA) as a law founded on the idea that sex workers are all victims and that all 'johns' are the real criminals from whom they need to be protected. It thus supports the theory that sex work is inherently exploitive. Harrison points out that the goals of PCEPA were clear but critiques by lawyers and academics were largely ignored and the opposition of sex workers entirely dismissed. Harrison fast forwards to 2018 to explore whether the new law might magnify harms faced by sex workers.

It's been almost four years since the Government passed the Protection of Communities and Exploited Persons Act (PCEPA). PCEPA is based on Swedish law, also known as the Nordic Model (or 'radical feminist' model). This model is founded on the idea that sex workers are all victims who need to be 'saved' and that all 'johns' are the real criminals from whom they need to be protected, thus maintaining the theory that sex work is inherently exploitive (Sampson 2014). Before PCEPA was passed, many argued that it would be harmful to sex workers, but their concerns were largely ignored. Lawyers and academics who opposed PCEPA were dismissed as wanting to "make it easier for pimps and johns to operate openly" (Porth 2014). Sex workers who opposed PCEPA were "dismissed, ridiculed, subjected to hostile questioning, and heckled" (Porth 2014). Fast forward to 2018: how has PCEPA been doing? Has it actually 'saved' sex workers and reduced the demand for sex work by targeting the clients? Has it made it safer for sex workers to operate? The goals of PCEPA were clear, but its opponents thought PCEPA would magnify the harms faced by sex workers before 2014.

BACKGROUND OF PCEPA

Before PCEPA, buying and selling sex was legal in Canada. However, the criminal code had provisions governing many of the surrounding aspects of sex work. In 2007, three sex workers launched a charter challenge against the federal government called the Bedford Case (*Canada v. Bedford* 2013). They claimed that three provisions of the criminal code which governed sex work were in violation of their section 7 charter rights "by depriving them of security of the person in a manner that is not in accordance with the principles of fundamental justice" *(Canada v. Bedford* 2013). The three provisions were as follows:

"s. 210 makes it an offence to keep or be in a bawdy house; s. 212(1) (*j*) prohibits living on the avails of prostitution; and, s. 213(1) (*c*) prohibits communicating in public for the purposes of prostitution" including in a private vehicle (*Canada v. Bedford* 2013). According to the Bedford case, these three provisions made sex work unsafe by forcing them to work in dangerous locations and hampering their ability to properly screen clients since they could not communicate in public or work in a bawdy house (*Canada v. Bedford* 2013). The provisions also limited sex workers' ability to protect themselves, since they could not live on the money they made from sex work, meaning they could not hire bodyguards, managers, or drivers, pay for rent, and so on (*Canada v. Bedford* 2013). All three of these provisions were found to violate the rights of sex workers and therefore were found to be unconstitutional. The Supreme Court gave Parliament one year to devise a new approach to regulating prostitution (*Canada v. Bedford* 2013), and thus Bill C-36 (PCEPA) was passed in 2014.

LEGAL IMPLICATIONS OF PCEPA

The main major legal implication of PCEPA is that it's now illegal to buy sex, but it is still legal to sell it. The clients of sex workers risk mandatory fines and possible imprisonment (Perrin 2014). This is a major change from the previous laws (it was legal to both buy and sell sex) and is meant to protect sex workers by (in part) criminalizing their clients. By targeting the clients, PCEPA is intended to reduce demand (Perrin 2014). Since PCEPA, several studies have looked at the consequences of this major legal implication. One study found that "sex workers continued to mistrust police, had to rush screening clients and were displaced to outlying areas with increased risks of violence, including being forced to engage in unprotected sex" (Krüsi et al. 2014). It also found no statistically significant difference in violence rates towards sex workers before and after PCEPA, suggesting that PCEPA failed to reduce harm (Krüsi et al. 2014).

Other studies support this, also finding that when clients are afraid of criminalization it forces sex workers to outlying areas to avoid police in spite of the fact that PCEPA allows sex workers to solicit in public areas except those located next to school grounds, playgrounds, or daycares (section 213(1.1) (Galbally 2016). In central areas with more police surveillance, clients were also "stressed and frightened of being exposed, making it more difficult for the seller to assess whether the client might be dangerous" (Galbally 2016). PCEPA also makes it illegal for sex workers to advertise sexual services other than their own, preventing them from working together. "This isolation has made it difficult for sex workers to work together, to warn each other about abusive clients or to provide informal care and support" (Sampson 2014).

SOCIAL IMPLICATIONS OF PCEPA

The first major social implication is that public opinion of sex work has slowly been shifting towards regulation, legalization, or decriminalization since the first public survey in 1985 (Lowman et al. 2012). However, as mentioned above, PCEPA aligns with an unpopular 'radical-feminist' model by which sex workers are considered victims of male violence towards women (Lowman et al. 2012). This model is not supported by polls. For example, Angus Reid Survey (2011) indicated that 67% of adults think that providing sexual services for money should be legal (Lowman et al. 2012). The same survey found that only 7% of respondents agree with punishing clients only (Lowman et al. 2012).

Since it is based on a 'radical feminist' model that views all sex workers as victims, PCEPA has silenced sex workers as it has no mechanism to explore their varied experiences (i.e. not all sex workers view themselves as victims, but there is no acknowledgement of that narrative in PCEPA) (Scoular 2010). Further, some sex workers argue that the government failed to address the systemic factors that compel them into sex work (i.e. for them, it is not the sex work that the government should have legislated, but the factors around sex work). For example, during the Bedford case, the government unsuccessfully argued that the violence, drug abuse, and victimization experienced by sex workers were inherent to sex work and not a result of the "dislocation and poverty that compel women to enter and remain in the street-level sex trade" (Sampson 2014). This idea implies that violence and victimization stem from and are an innate part of sex work, not separate issues resulting from other factors which the government could have addressed instead(Sampson 2014).

Additionally, the radical feminist theory of sex work upon which PCEPA is premised "relies on a

circular logic whereby women's involvement in sex work constitutes proof of their victimization and lack of agency, creating the context in which the experiences of sex workers can be ignored" (Galbally 2016). In addition to ignoring the varied experiences of sex workers, targeting the clients significantly amplifies stigma and discrimination against sex workers (Krüsi 2014). This stigmatization and discrimination impacts the safety strategies used by sex workers, and so has been found to "further reduce sex workers' ability to access police protections or health and social support services"(Krüsi 2014). These aspects exacerbate the stigmatization faced by sex workers rather than focusing on harm reduction, which was the intent of PCEPA.

POLICY IMPLICATIONS OF PCEPA

As previously mentioned, the social implications of PCEPA create a stigma around sex workers which reduces their access to police protection and health/social support services. These social repercussions are a result of policy focused on prevention, meaning sex work is viewed as a practice inherently harmful and thus needs to be prevented, instead of harm reduction policy (Krüsi 2014). For example, research from the Canadian Public Health Association (CPHA) has shown that countries with "structural supports, such as sex worker unions... are effective in fostering a climate of prevention and subsequent reduction in STI and HIV prevalence (CPHA 2014)". However, PCEPA focused on a prevention policy, and thus resulted in no formal social or structural supports (CPHA 2014).

Another policy implication that stems from the prevention lens, due to the resulting stigmatization and discrimination, is that sex worker interactions with police continue to be negative. In Ottawa, sex workers claim to still be targeted, victimized, stigmatized, and publicly outed by police after PCEPA (Karim 2017). To find clients, police sweep areas and issue red or no-go zones (Karim 2017). This tactic controls the physical whereabouts of known street-based sex workers, displacing them to unsafe outlying areas (Karim 2017). This displacement not only marginalizes sex workers, it also creates physical barriers (i.e. distance) when sex workers try to access their communities' social, health and economic supports (Karim 2017). These police sweeps and 'no-go areas' also seem to cause the clients to increase levels of violence against sex workers (Ka Hon Chu *SN 16* 2013). For example, Montreal police did a large client sweep (arresting 76 clients) that was followed by significant increases in reported violence experienced by sex workers (Ka Hon Chu *SN 16* 2013). After this sweep, the local police prefect admitted that targeting clients was ineffective and resulted in negative impacts towards sex workers safety (Ka Hon Chu *SN 16* 2013). Nonetheless, police swept the same area again (arresting 54 clients), and it again resulted again in a massive increase in reported violent incidents involving sex workers (Ka Hon Chu *SN 16* 2013). Also, those sex workers who have interacted with police after PCEPA have continued to report negative, stereotyped experiences; for example, name calling, bullying and other verbal abuses, physical abuses, and being discredited (Karim *SN 32* 2017).

CONCLUDING REMARKS

Further research is needed on the affect of PCEPA on the lives of sex workers. Although further research is needed, current research suggests PCEPA does not address many of the issues brought up in the Supreme Court ruling in *Bedford v. The Attorney General of Canada* and seems to recreate the harms that were found to be unconstitutional in that landmark case. Legal, social, and policy implications suggest that PCEPA does little to prevent sex work, reduce demand for sex work, or protect sex workers. ■

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RÉSUMÉ

A Critical Look at the 2014 Protection of Communities and Exploited Persons Act (PCEPA)

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Sarah Harrison, stagiaire au Comité d'examen des politiques de l'ACJP, fournit un compte rendu de l'adoption en 2014 de la Loi sur la protection des collectivités et des personnes victimes d'exploitation (LPCPVE). La prémisse de cette loi reposait sur l'idée que les travailleuses du sexe sont des victimes et les proxénètes, des criminels de qui elles doivent être protégées, ce qui perpétue la théorie selon laquelle le travail sexuel entraine nécessairement une relation d'exploitation. Bien que les objectifs de la LPCPVE aient été clairement énoncés, les critiques émises par les avocats et les chercheurs ont été largement ignorées et l'opposition des travailleuses du sexe entièrement rejetée. Puis Sarah Harrison se demande si quatre ans plus tard, en 2018, la nouvelle loi n'aurait pas intensifié les dangers auxquels font face ces travailleuses.

Sexual Harassment in Female Institutions

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In this article, University of Ottawa undergraduates Farina Chaudhry and Joël Roy Sévigny report on the needs of female offenders within a framework of a male-centric prison system, noting that a perceived devaluation of female offenders also comes at the price of a corresponding lack of research on women in correctional institutions. Female inmates are not the only ones to pay the price for Canada's ill-fitting prisons for women, report the authors, female prison guards are also at risk of assault and exploitation, whether by inmates or correctional staff.

Women who have been sentenced to time in prisons and penitentiaries (hereafter "prisons") have a different experience of the prison system than do their male counterparts when it comes to accommodation and supervision strategies that focus on - or rather neglect - gender specific requirements. This is now an undisputed fact that Statistics Canada says is explained by multiple factors but largely owing to the relatively small number of women incarcerated (para. 1). Because the female prison population is so small, the conditions in women's prisons and the needs of women therein are often overshadowed or masked by men's needs (Statistics Canada, April 2011, para. 1.) It has long been "felt that there were too few women to be of concern" (Adelberg et al. 1987), yet the geography of Canada and small female inmate population have meant that women are often jailed far away from home or in very small numbers in numerous institutions, and that federal offenders are more often or not sent to provincial facilities offering minimal programs and/or housed in the wing of a man's prison (Correctional Service Canada (CSC) March 2015). By contrast, the 2016-2017 Annual Report of the Office of the Correctional Investigator states that female offenders are actually the fastest growing population in Canadian corrections and that the number of women sentenced in federal institutions increased by 29.7% from 2007 to 2017 (pp. 58). This then raises the question of why so little consideration has been given to understanding the individual struggles and needs of female offenders compared to those of male offenders (CSC March 2015).

Dating back to when the study of crime and criminals (i.e., Criminology) first became popular and the field emerged as a discipline (Rafter 2011), the consensus was that women were traditionally much less likely than men to commit violent crimes or even participate in minor crimes such as theft or fraud (Nagel & Hagan 1983, pp. 91). Even though The British North American (BNA) Act established in 1867 and the UN Standard Minimum Rules for the Treatment of Prisoners (SMR) adopted in 1955 draw attention to the operation of the justice system as a whole and provide the guidelines for what is acceptable in the treatment of those in

custody, these legal frameworks and international agreements fall short on drawing sufficient attention to the particular needs of women held in prison or alternative detention centres (CSC November 2017).

Despite the landmark step of adapting the UN SMR in 2010 from the Treatment of Prisoners into the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders recognizing that female prisoners have distinct necessities from male prisoners (Barberet & Jackson 2017, pp. 215; CSC, November 2017), these women continue to live in conditions imposed on them by a male-centric model of prison. In spite of the changes noted above, which suggest a step forward in gender-responsiveness and gender-sensitivity policies, there is still a relative devaluation of female offenders. This devaluation is evidenced by and perhaps the result of a corresponding lack of research on subjective experiences of women in correctional institutions, whether they be inmates or correctional staff. It seems that the model for male prisons was and continues to be replicated in female institutions (Berzins and Cooper 1982; Edelberg 1985, and Berzins and Hayes 1987) leading to the transfer of the same problems and some new ones to prison communities receiving women (UN Women, para. 1).

SEXUAL ABUSE IN CANADIAN PRISONS

Sexual abuse is a problem in carceral settings throughout North America, but the issue is often centred on male inmates. In the United States, the 2003 Prison Rape Elimination Act (PREA) initiated a wave of research into the motivations for victim acceptance of prison rape and the normalization of such actions within the work culture of such institutions. While most research acknowledges that the Act did little to reduce sexual assault in US prisons, the research conducted raised awareness around the issue (Thompson 2008). Canadian researchers are still catching up to our southern neighbours in this regard, however, the increased interest down south has started to translate into interest in Canada.

Ellenbogen's (2009) comprehensive comparison of sexual assault in prisons in Canada and the United States serves as a good starting point. The author argues that Canada's situation differs greatly from the US. First and foremost, the legislative differences between Canada and the United States show that an act similar to PREA does not exist in Canada. Some have argued that this is due to the problem being mostly non-existent, or not important in Canadian institutions (Ellenbogen 2009). Others, including the then Executive Director of the John Howard Society, Craig Jones, believe that Canada has simply been slow to implement new, progressive laws related to the treatment of inmates in Canadian institutions (L'Arche Canada, 2010).

Statistics Canada (Mahony April 2011) points out that slow legislative developments in Canada may be due to women's institutions being eclipsed by men's institutions—an idea based on the small number of females committing crimes (para. 1). As a result, less information is available to understand, and better the experience of women in prison in Canada. Nonetheless, the available research, albeit incomplete, shows the current state of things and could help policy-makers develop tools to improve women's situation in prison.

Sexual exploitation in the prison context is an issue afflicting inmates and female prison workers. Consider the situation in a Canadian correctional facility that has left Tracy Mercier, a prison guard with Correctional Services Canada (CSC), damaged, without dignity and unable to return to work (Johnson 2017, para. 3). Mercier had reported one of her male co-workers for having bullied her for months; yet, despite video evidence of the harassment, it took two months for an internal investigator to make a decision (Johnson, 2017, para. 14). Additionally, even though there was substantial evidence to get a conviction, British Columbia's Prosecution Services (BCPS) decided not to proceed with a sexual assault charge because it was not deemed to be in the "public interest" (Johnson 2017, para. 31).

A recent BC Prosecution Services internal report describes the culture within a federal prison as toxic and riddled with harassment, bullying, and intimidation (Johnson, 2017, para. 27). This begs the question: ***If female workers inside prison institutions are treated in such a way, how are female inmates being treated by an overly male staff?*** The Canadian Human Rights Commission has raised concerns regarding the handling of harassment cases as well as the prevalence of

sexual harassment in male dominant institutions (Johnson 2017, para 36), but the problem is also apparent with female inmates.

Even though prisons have a legal duty to protect inmates against abuse, sexual abuse by the guards is described as an "institutionalized component of punishment behind prison walls" (Buchanan 2007, pg. 45). This means guards are aware that they can sexually exploit female prisoners without fear of sanction or civil liability, especially since it is at their discretion to enforce rules selectively or even disregard them altogether (Buchanan 2007, pg. 55). Consider, for instance, the cases of ex-inmates Rhona and Jade Thompson (names changed to protect identity), both of whom had served time in multiple prisons and experienced sexual advances and exploitation by male staff members as well as female staff members.

Rhona claimed that even though prisoners and staff were aware of her relationship with a guard, it continued for the rest of her sentence. The "rewards" began with a few cigarettes here and there but eventually increased to full packets of Marlboros and vodka, usually accompanied by a request to "bring him [the guard] off" (Allison 2009). Jade's statement revealed that "if you're not going to buy into the approaches made by the staff, you will not progress, you will not get the good jobs, or get on the course that will help you get early release" (Allison 2009). In short, certain prison guards are able to exercise their power for personal 'benefit' by violating rules and laws they themselves have sworn to protect. They exercise their power to get what they want, while inmates, already being 'punished' under the law and serving their sentences, are forced to pay another price for their crime. Having few other options, it is not hard to imagine why inmates may "play along"; they are left with the choice between a (relatively) comfortable sentence or one made increasingly worse by guards applying pressure tactics and who in some cases have the power to add supplemental consequences if the inmate refuses.

These were not the only cases in which Correctional Service Canada faced allegations of sexual harassment. In 2012, Grand Valley Institution for Women in Kitchener, Ontario came into the spotlight when a male prison guard was accused—while dealing drugs to various inmates—of trading said drugs for sexual favours (Brigitte & Seglins 2012, para.1). Kim Pate, then Executive Director of the Canadian Association of Elizabeth Fry Societies (CAEFS), pointed out that there may be more cases as others have alleged to have been approached or to have exchanged sexual favours for either drugs or tobacco while incarcerated (Noël & Seglins 2012, para. 8).

An awareness of these types of environments—violent, abusive, and fear-ridden—now informs pop culture, as seen in shows like "Orange is the New Black", which uses parody to convey the power prison guards hold over inmates (Chen 2017). The show, for example, depicts a consensual relationship between inmate Daya and Officer Bennett, yet the innate power structure and imbalance between guards and inmates makes it an implicitly illegal and immoral act of sexual abuse (Noël & Seglins 2012, para. 13). Inmates in carceral settings hold very little power and some may use their sexuality as a means of feeling some personal power and autonomy (Chen 2017).

It thus becomes crucial to examine the powerplay going on in these institutions. As previous examples showcase, sexual abuse is made possible due to power imbalances within organisations where men often hold positions of power. In prison, guards wield a lot of power and are able to take advantage of their position not only through verbal harassment, improper visual surveillance, and improper touching, but also through severe criminal violations such as rape (Buchanan 2007, pg. 55). These acts, and the knowledge that these acts do occur in prison, creates an environment where abuse becomes a vehicle of domination over institutionalized women. Steps taken by female inmates to thwart, end or report such behaviour often results in guards becoming abusive (Buchanan 2007, pg. 56).

Female inmates sometimes become "sex slaves" in hopes of protecting themselves (Ellenbogen 2009, p. 340). Buchanan (2007) reports at least one prisoner claiming that sex with a guard gave her power and that sex is a precious commodity in prison (pg. 67). Female prison workers also fear coming out in the open about any instances of sexual abuse for multiple reasons. Not only is the system for investigating such claims inadequate, it puts women who report abuse at risk of retaliation

from the abuser, other guards, or even higher management (Weiser 2016, para. 3).

The importance of power does not end with the relationship between guards and inmates. It can also be observed when looking at the factors involved in reporting such abuse. Ellenbogen's 2009 study of prison rape found underreporting to be one the most important difficulties to overcome (pg. 340). Underreporting of sexual victimization is present both with prison inmates and guards (Ellenbogen 2009, pg. 340). The reasons for underreporting are numerous and varied, however, the consequences of reporting such abuse may be even more numerous and devastating for the victimized party. Dennehy et al., (2006) talk about the unique bond that emerges among prison employees that encourages the institutionalization of a code of silence at many levels (pg. 176). Officers see themselves as completely separate from, and superior to, inmates. Officials with higher ranks influence officers to remain quiet and turn a blind eye to sexual abuse committed by their fellow coworkers (Dennehy et al. 2006, pg. 176; Ellenbogen 2009, pg. 340). This established code of silence takes precedence over common sense and decent behaviour, thus compromising inmate safety and increasing the dangerousness of prisons thereby also arguably inhibiting the rehabilitation process (Dennehy et al. 2006, pg. 176).

Life behind bars is a world where "snitching", informing someone that a violation occurred, is not believed by prison staff and can get inmates killed (Dannemore 2015). This type of environment explains the fear female inmates have of being labelled a "snitch" and also why many instances of abuse, including sexual, remain underreported (Ellenbogen 2009, pg. 340). When investigators and prison staff pronounce inmates as untrustworthy, their statements become worthless, and it can be expected that female inmates ask themselves "who would believe a felon" and weigh any benefits of coming forward as nonexistent in comparison with the negative impacts that would ensue (Weiser 2016, para. 9; Buchanan 2007, pg. 66). Hensley and Tewksbury (qtd. in Thompson, 2008, pg. 415) demand to know how crime control advocates can encourage inmates to report abuse (whether they are a victim or a witness) while at the same time blame the victim by arguing that inmates "get what they deserve" with prison rape.

Naturally, provincial and territorial jurisdictions have legislation that decrees the spectrum of services available for diverse correctional populations. One such body of laws that provides a legislative framework for Correctional Service Canada (CSC) is the Corrections and Conditional Release Act. Specifically, as per Section 4 of this Act, CSC is ordered to ensure that: "(g) correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and are responsive to the special needs of women, Aboriginal peoples, persons requiring mental health and other groups" (CSC, November 2017).

Still, ambiguity in Canadian legislation related to abuse in correctional settings is a factor. The fact that provincial prisons are administered under provincial law while the Correctional Service of Canada (CSC)is governed principally by the Corrections and Conditional Release Act (1992) contributes further to this ambiguity. However, the Federal act, which deals mainly with the management of institutions and inmates, has no mention of sexual assault within institutions. While some sections mention the fact that officers of the same sex should conduct inmate searches (including strip searches), no mention of sexual assault by staff or among inmates exists. Though Ellenbogen's (2009) study recognizes that Canada's prisons are safer than their US counterparts (p. 345), the current state of Canadian laws still allows prison officials to downplay or outright ignore sexual abuse allegations and treat these instances as disciplinary issues rather than criminal in nature (Brigitte & Seglins 2012, para. 10). The sexual harassment of female inmates is a matter that needs further research and a deeper review.

Correctional institutions are supposed to practice humane custody and supervision of all inmates, male and female (Ellenbogen 2009, pp 353); yet, that is far from the reality of things. Dennehy et al., (2006) argue that if staff members do not follow the rules, there is no hope to intervene or change an inmate's behaviour (pp 177). Why should inmates hold themselves answerable to the rule of law when those enforcing it do not bother? The backlash of such serious degrees of unaccountability, as seen with the cases of Tracy Mercier (a corrections worker herself) and inside the walls of Grand Valley institution, is a system that lacks integrity as well as moral order (Ellenbogen 2009, pp 177).

In an environment where prison officials are the main link between inmates and their successful rehabilitation for reintegration into society, it is crucial for them to be role models for positive behaviour as well as the very best people inmates meet in life. ■

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RÉSUMÉ

Sexual Harassment in Female Institutions

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Dans cet article, les étudiants de premier cycle de l'Université d'Ottawa, Farina Chaudhry et Joël Roy Sévigny, mettent l'accent sur les besoins des contrevenantes dans un système pénitentiaire masculiniste. Ils observent qu'un système qui semble peu valoriser les contrevenantes entraine aussi un manque de recherches sur les femmes dans les établissements correctionnels. Selon les auteurs, les détenues ne sont pas les seules à payer le prix d'un système pénitentiaire qui n'a pas été conçu pour les femmes. Les gardiennes risquent également d'être agressées et exploitées, et ce, autant par les détenues que par les employés de ces établissements.

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